UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,245	09/27/2002	Werner J. Windbergs	1001.99001	2121

24254 7590 12/18/2002

ROGER A JACKSON, ESQ
16430 WEST ELLSWORTH AVENUE
GOLDEN, CO 80401-6545

EXAMINER	
BRAHAN, THOMAS J	

ART UNIT	PAPER NUMBER
3652	

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/065,245	Applicant(s) WINDBERGS
	Examiner Thomas J. Brahan	Art Unit 3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

P riod for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *THREE* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Sep 27, 2002* .

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-17* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☒ Claims *1-17* are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-14, drawn to a crane, classified in Class 212, subclass 315.
II. Claims 15-17, drawn to a method of using a crane, classified in Class 212, subclass 270.

2. The inventions are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this application, the apparatus claims recite a crane with an intended use of loading and unloading an ISO container and include specific first and second frame structures, and a specific winch location. The method claims are specific to an ISO container and do not recite the specifics of the frames or the winch. Note that the Tantilinger and the Kucharczyk et al references teach the claimed method, but use different apparatuses. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. To expedite prosecution, an action on the merits of all the claims follow.

3. The disclosure is objected to because of the following informalities. The list of the reference numerals in the drawings includes a first plurality of rollers 46, which are not discussed in the detailed description of the invention. Appropriate correction is required.

4. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.

5. Claims 1-15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For example:

a. In the penultimate line of claims 1 and 8, the term "said second frame vertical extension" lacks antecedent basis within the claims. The claims provide a basis for a vertical extension for the second frame's beam or angle iron, but not for the frame itself.

b. It is unclear as to how claims 4 and 11 can include a second plurality of rollers, when the claimed combination of these claims does not include a first plurality of rollers. It is also unclear as to how claims 6 and 14 can include a third plurality of rollers, when the claimed combination of the claim does not include first and second pluralities of rollers. Is applicant indirectly including (claiming) the other rollers in these claims? Note that claims 4, 6, 11 and 14 depend directly from their independent claims, not from the claims that provide a basis for the other pluralities of rollers.

c. It is unclear as to how applicant is considering the angle irons of the first frame and the angle irons of the second frame as having a horizontal extension, a vertical extension, and a lengthwise span, as recited in claim 8. An angle iron has two webs, not three.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

8. Claims 1, 2, 8, and 9, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Black. Figures 8-10 of Black show a crane with a first frame (98a, 98b), a second frame (104, 104) and

a winch that does not extend below other lower portions of the second frame. The intended use recitations, and the "adapted to attach" recitations are not positive inclusions of the ISO container structure.

9. Claims 15-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kucharczyk et al.

10. Claims 1-7, as best understood, are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dunbar US 4,425,071. Dunbar US 4,425,071 shows a crane with a first frame (15), a second frame (43), and a winch (93) which does not extend below the second frame depth as wheels (21) are part of the frame. If the wheels are not considered as part of the frame depth, the winch dimensions approximate the frame depth, as to have the difference considered as a design consideration, within the level of routine skill in the art.

11. Claims 8-14, as best understood, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Black in view of Dunbar US 4,425,071. Figures 8-10 of Black show the basic claimed crane apparatus as discussed above. It varies from the claims by not showing rollers for the various sliding surfaces. Dunbar US 4,425,071 shows a similar crane apparatus with rollers (21, 23, 103) for supporting the first frame and rollers (49, 51, 63) supporting the second frame. It would have been obvious to one of ordinary skill in the art to modify the crane apparatus of Black by providing it with rollers, to smoothly support the first and the second frame, as taught by Dunbar US 4,425,071.

12. Claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Tantilinger. Tantilinger shows the basic claimed method of unloading standardized container, as well as a trailer, see the first paragraph of the specification, comprising the steps supporting the crane apparatus in the enclosure, moving a winch carriage (128) on a second frame (12), the second frame being on a first frame (40, 40'), and lowering winch hook to the load. To use a cable winch instead of a chain winch for the crane apparatus of Tantilinger would have been an obvious substitution of equivalents, within the level of routine skill in the art.

13. Cowan, Bragg, Samaniego and Feldman et al show similar hoists with winches which are mounted as to avoid contact with the load. Robinson, Dunbar 4,297,071 and Gunderson show similar frame roller arrangements.

14. An inquiry concerning this action should be directed to Examiner Thomas J. Brahan at telephone number (703) 308-2568 on Mondays through Fridays from 9:30-7:00 EST. The examiner's supervisor, Ms. Eileen Lillis, can be reached at (703) 308-3248. The fax number for Technology Center 3600 is (703) 305-7687.

12/7/02

THOMAS J. BRAHAN
PRIMARY EXAMINER